



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

BY FIRST CLASS MAIL

SEP 17 2013

Thomas J. Josefiak, Esq.  
Michael Bayes, Esq.  
Holtzman, Vogel, Josefiak, PLLC  
45 North Hill Drive, Suite 100  
Warrenton, VA 20186

RE: MUR 6730  
Michael Williams for Congress  
and Stephen R. Hicks in his official  
capacity as treasurer

Dear Messrs. Josefiak and Bayes:

On, September 10, 2013, the Federal Election Commission accepted the signed conciliation agreement submitted on your clients' behalf in settlement of a violation of 2 U.S.C. § 441a(f), a provision of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003), and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). Information derived in connection with any conciliation attempt will not become public without the written consent of the respondent and the Commission. See 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the conciliation agreement's effective date. If you have any questions, please contact me at (202) 694-1341.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Columbo".

Michael A. Columbo  
Attorney

Enclosure  
Conciliation Agreement

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of

Michael Williams for Congress and

Stephen R. Hicks in his official capacity as treasurer

MUR 6730

**CONCILIATION AGREEMENT**

This matter was initiated by the Federal Election Commission ("Commission") pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. The Commission found reason to believe that Michael Williams for Congress and Stephen R. Hicks in his official capacity as treasurer, (collectively, the "Respondents" or the "Williams Committee") violated 2 U.S.C. § 441a(f) of the Federal Election Campaign Act of 1971, as amended (the "Act.").

NOW, THEREFORE, the Commission and the Respondents, having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Michael Williams was, consecutively, a 2010 U.S. Senate candidate from Texas, a 2012 U.S. Senate candidate from Texas, and a 2012 candidate for Congress in the 25th Congressional District of Texas.

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2. Michael Williams for Congress (formerly known as Michael Williams for U.S. Senate Committee) is Williams' principal campaign committee and Steven R. Hicks is the committee's treasurer.

3. The Act provides that "no person shall make contributions . . . to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed [\$2,400 for the 2010 election cycle and \$2,500 for the 2012 election cycle,]" 2 U.S.C. § 441a(a)(1)(A), and that no candidate or political committee shall knowingly accept an excessive contribution. 2 U.S.C. § 441a(f).

4. The Act also provides that the limits "shall apply separately with respect to each election[.]" 2 U.S.C. § 441a(a)(6). A candidate receives a limit for an election if that candidate participates in the election. *See* 120 Cong. Rec. S18,525 ("Individuals cannot give to any candidate or political committee supporting that candidate more than \$1,000 for each election in which the candidate participates . . ."); *accord* 11 C.F.R. § 110.1(b)(3)(i)(C) ("If the candidate is not a candidate in the general election, all contributions made for the general election shall either be returned or refunded to the contributors or redesignated . . .").

5. The Commission has applied these rules to the treatment of contributions received for a special run-off election that ultimately did not occur, *see* AO 1982-49 (Weicker) at 2 (approving the acceptance of contributions before there is an established necessity for the election provided that the contributions are separately accounted for and are returned to the donors in the event that no run-off election is held), and contributions for the anticipated special election to replace Sen. Hutchison, if she chose to resign. *See* AO 2009-15 (White) at 4-5, 7-8 (approving the acceptance of contributions for the special election but noting that contributions

1 must be refunded or redesignated if the anticipated special election did not occur). Mr.  
2 Williams' situation was not factually identical to the position of the requestor in Advisory  
3 Opinion 2009-15, insofar as Mr. Williams declared himself a candidate for the anticipated 2010  
4 special election, while the requestor in Advisory Opinion 2009-15 declared as a candidate for the  
5 regularly-scheduled 2012 election.

6 6. Contributions that are not designated for a particular election are considered to be  
7 made with respect to the next election for federal office after such contribution is made. 11  
8 C.F.R. § 110.1(b)(2)(ii).

9 7. In October 2007, Senator Hutchison indicated that she had formed a committee to  
10 run for Governor of Texas in the March 2010 primary and November 2010 general elections and  
11 that she might resign from the Senate during her gubernatorial campaign. In December 2008,  
12 Senator Hutchison transferred nearly \$8,000,000 from her federal campaign committee (Kay  
13 Bailey Hutchison for Senate Committee) to her Texas gubernatorial campaign committee  
14 (Texans for Kay Bailey Hutchison). See Kay Bailey Hutchison for Senate Committee 2008 Year  
15 End Report at 93-94. On July 29, 2009, and afterwards, Senator Hutchison reportedly stated that  
16 she intended to resign her U.S. Senate seat in October or November 2009. On November 13,  
17 2009, Senator Hutchison announced that she was "delaying her resignation from the Senate," but  
18 that she still intended to resign her Senate seat after the Texas gubernatorial primary election in  
19 March 2010, regardless of that election's outcome. On March 31, 2010, Senator Hutchison  
20 announced that she would not resign from the Senate.

1           8.       Had Senator Hutchison resigned from the Senate as she initially indicated she  
2 would, a special election was expected to have been held on November 3, 2009, May 8, 2010,  
3 November 2, 2010, or on another date determined by the Governor of Texas.

4           9.       Beginning in 2008, multiple candidates campaigned for the anticipated special  
5 election. News reports published between May – November 2009 referred to at least seven  
6 different contenders for Senator Hutchison's U.S. Senate seat in terms that reflected the  
7 conventional wisdom that an active and real campaign was ongoing. In Advisory Opinion 2009-  
8 15, issued July 29, 2009, the Commission described the circumstances surrounding the same  
9 anticipated special election as follows: "the likelihood of the occurrence of a special election is  
10 sufficiently real in this situation. Based on statements from Senator Hutchison and her agents,  
11 [the requestor] is presented with a strong possibility that Senator Hutchison will resign before the  
12 gubernatorial primary or gubernatorial general election as well as a certainty that she will resign  
13 by the end of 2010 if she is elected Governor."

14          10.      On December 16, 2008, Mr. Williams filed his Statement of Candidacy (Form 2)  
15 and the Williams Committee filed its Statement of Organization (Form 1) with the Commission.  
16 With this Statement of Candidacy, Mr. Williams declared himself a candidate for election to the  
17 U.S. Senate in Texas in 2010. The Williams Committee received its first disclosed contribution  
18 on January 12, 2009.

19          11.      From the time Mr. Williams began raising money in anticipation of a special  
20 election to March 31, 2010, the date on which Senator Hutchison announced that she would not  
21 resign from the U.S. Senate, the Williams Committee raised \$490,824.35.

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12. After Sen. Hutchison's announcement on March 31, 2010, the Committee refunded or redesignated \$32,000 that it received in anticipation of special general or run-off elections. The remainder of the funds raised (\$458,824.35) were previously spent or otherwise obligated in connection with Mr. Williams' efforts in anticipation of the 2010 special primary election that ultimately did not occur.

13. In April 2010, Mr. Williams filed an amended Statement of Candidacy, declared his candidacy for the 2012 Senate primary, and designated the Williams Committee as his principal campaign committee. Mr. Williams did not refund the \$458,824.35 in contributions for the 2010 special primary election that had already been spent or otherwise obligated, nor did he seek to redesignate funds already spent or obligated to the 2012 Senate election. Subsequently, in June 2011, Mr. Williams declared his candidacy for the U.S. House of Representatives in the 25th Congressional District of Texas. The Williams Committee—after changing its name to Michael Williams for Congress—became the principal campaign committee for his House candidacy and Mr. Williams participated in the 2012 House primary election.

14. The Williams Committee received additional contributions for the 2012 Senate and House elections from some of the same contributors whose contributions comprised the \$458,824.35 in 2010 special primary election contributions that it had not refunded or redesignated.

15. The Act provides contribution limits on a "per election" basis, and does not treat a period during which a special election is merely anticipated as an "election," regardless of the reasonableness of that anticipation. Accordingly, the Act does not treat the "campaign" in which multiple candidates in Texas participated between 2008 and March 31, 2010, in anticipation of a

1 special election to fill Senator Hutchison's seat following her resignation, as an "election."  
2 Because Mr. Williams sought nomination for election in 2010 to the U.S. Senate, including  
3 raising more than \$5,000 in contributions for that effort, he was a candidate within the meaning  
4 of the Act. *See* 2 U.S.C. § 431(2). As noted above, however, once it became clear that a 2010  
5 Senate election would not be held, and Williams would instead participate in the regularly-  
6 scheduled 2012 election, the Williams Committee was required to refund, re-designate to a 2012  
7 election, or re-attribute the special election contributions it received, because it was not entitled  
8 to an additional contribution limit for the anticipated 2010 special election in addition to a limit  
9 for a 2012 election.

10 16. Even if the \$458,824.35 in 2010 contributions that the Committee received were  
11 re-assigned to its 2012 election limit, because they were not specifically designated for the 2010  
12 election, or redesignated, the aggregate amount of contributions from the Committee's donors  
13 exceed the 2012 election contribution limits by \$137,300.

14 17. Respondent contends that its reliance on Senator Hutchison's various expressions  
15 of her intention to resign her U.S. Senate seat was reasonable, and Respondent's campaign in  
16 connection with the anticipated special election to fill that seat was not unfounded or speculative.  
17 Respondent contends he did not consider himself a candidate for election in 2012 until after  
18 Senator Hutchison's announcement on March 31, 2010, when it became clear that no special  
19 election would be held in 2010. The Williams Committee contends that its actions, as described  
20 herein, were undertaken in good faith, and in accordance with its understanding of the proper  
21 application of the Act, Commission regulations, and Commission precedent and guidance. The  
22 Williams Committee contends that it is currently inactive and seeks to terminate as soon as

1 possible upon the resolution of this matter. The Williams Committee's current outstanding debts  
2 and obligations exceed its cash-on-hand balance.

3 V. As set forth above, Respondents violated 2 U.S.C. § 441a(f).

4 VI. 1. Respondents agree to and will pay a civil penalty to the Federal Election  
5 Commission in the amount of Six Thousand Two Hundred and Fifty Dollars (\$6,250), pursuant to  
6 2 U.S.C. § 437g(a)(5)(A); and

7 2. Respondents will cease and desist from violating 2 U.S.C. § 441a(f).

8 VII. The Commission, on request of anyone filing a complaint under 2 U.S.C.  
9 § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance  
10 with this agreement. If the Commission believes that this agreement or any requirement thereof has  
11 been violated, it may institute a civil action for relief in the United States District Court for the  
12 District of Columbia.

13 VIII. This agreement shall become effective as of the date that all parties hereto have  
14 executed same and the Commission has approved the entire agreement.

15 IX. Respondent shall have no more than 30 days from the date this agreement  
16 becomes effective to comply with and implement the requirements contained in this agreement  
17 and to so notify the Commission.

18 X. This Conciliation Agreement constitutes the entire agreement between the parties  
19 on the matters raised herein, and no other statement, promise, or agreement, either written or  
20




oral, made by either party or by agents of either party, that is not contained in this written  
agreement shall be enforceable.

FOR THE COMMISSION:

Anthony Herman  
General Counsel

BY:

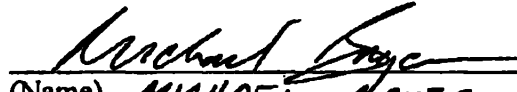


Daniel A. Petalas  
Associate General Counsel  
for Enforcement

Date

9/16/13

FOR THE RESPONDENT:



(Name) MICHAEL BAYES  
(Position) COUNSEL

Date

June 24, 2013